

5th May, 1828.—BLAND, *Chancellor*.—As this is a creditor's suit, in which it is evident, that there must be a sale of the real estate of the deceased for the payment of his debts, it stands now, according to the course of the court, ready for a decree to that effect, without having been regularly set for hearing; and it has been submitted accordingly, without argument or controversy of any kind; except as to who shall be appointed trustee to make the sale. The original plaintiffs recommend *G. Wells, Jr.* and the petitioners, who have been admitted as co-plaintiffs, recommend *L. Gassaway*. The petitioners have been permitted to come in since the defendants had answered; the suit, therefore, as to such petitioners has been, in effect, so instituted as not to call on the defendants to answer as to a bill of complaint against them; and consequently, as the validity of the petitioners' claims have not, as yet in any way, been put in issue, the decree now about to be passed for a sale cannot, in any respect determine, that they, like those of the original plaintiffs, not having been contested, must be taken to have been sufficiently established. Nevertheless, so far as regards the appointment of a trustee, the recommendations of such creditors may be allowed to have their due consideration. (a) Here, however, the bank merely alleges, that it is a creditor of the deceased to a very large amount, without saying how much; and the petitioner *Ridgely* states his claim to be about \$400. Therefore, as the parties have given no reasons for their recommendations, the Chancellor must allow that of the original plaintiffs to have the greatest weight, as they have at this time shewn the largest specified amount of claims.

Decreed, That the real estate, whereof *Beale M. Worthington* died seized, or possessed, or so much thereof as may be necessary, be sold for the payment of his debts; that *George Wells, Jr.* be appointed trustee, to make the sale, &c. &c.; which sale shall be on a credit of four, eight, and twelve months from the day of sale, with interest, &c. &c.; and that the trustee give notice to the creditors of the deceased to file the vouchers of their claims within four months from the day of sale.

After which, *Elizabeth R. Worthington*, by her petition, stated, that she was the widow of the late *Beale M. Worthington*, and as such, was entitled to dower in the real estate, of which he died

(a) *Strike's Case*, 1 Bland, 85.